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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,476	07/17/2003	Alfred Stirnemann	35624	2892

116 7590 06/10/2005

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EXAMINER

SHAH, KAMINI S

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,476

Applicant(s)

STIRNEMANN, ALFRED

Examiner

Kamini S. Shah

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15 and 18-21 is/are allowed.
- 6) ☒ Claim(s) 16, 17 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments

1. Applicant's arguments, see page 10 of 11 remarks, filed 1/25/05, with respect to the rejection(s) of claim(s) 16, 17, 22 and 24 under 35 USC 102 (b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Bennett 4,079,198.

2. The indicated allowability of claims 23 and 25 is withdrawn in view of the newly discovered reference(s) to Bennett (4,079,198). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16,17,22-26 rejected under 35 U.S.C. 103(a) as being unpatentable over Okabe et al, article title "Headphone response on real ears and a head and Torso simulator" in view of Bennett 4,079,198.

Regarding to claimed invention, Okabe et al teaches an apparatus for determining the acoustic impedance comprising probe, a microphone connected in channel see Figure

2. Figures 3 and 4 shows frequency response of the probe tube and the measuring

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point in the outer ear, and a microphone M. Okabe et al also discloses an prior art that teaches ear simulator (C coupler) terminated in a simple resistance element of 340 cgs acoustic ohms. However, Okabe does not clearly disclose the acoustic resistor placed between the speaker and an exit opening in a connecting channel to the microphone.

Bennett discloses an [ac]oustic coupler whose acoustic impedance is representative of the acoustic impedance of the normal human ear over the range of test frequencies, see col. 3, lines 65-col. 4, lines 1-15; Bennett also discloses the resistors connected to the acoustic coupler to the loudspeaker by way of an input waveguide and to connect an output waveguide to a microphone and electrical measuring device, see col. 6, lines 20-45. Bennett discloses that acoustic resistor arranged in the channel (tube 54) for preventing the volume of the pressurization system affecting the sound monitoring system (see col. 4, lines 10-15). It is this reasoning, it would have been obvious to one of the ordinary skill in the art at the time of invention made to combine the acoustic resistor into the ear simulator (C coupler) of the Okabe.

Regarding claim 26, claim recites the similar features as claim 16, with additions of an acoustic unit for receiving electrical signal from the microphone, and for determining an impedance Z , wherein a series of acoustic calibration signals of a number of known acoustic impedances covering different calibration scopes are generated by means of a predetermined simulation for output by the probe for reception by the microphone, Bennett teaches relative level characteristic of the input signal and determines an impedance with the change of frequency, see col. 6, lines 20-64.

Allowable Subject Matter

5. Claims 1-15 and 18-21 are allowable over prior art.

Conclusion


6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamini S. Shah whose telephone number is 571-272-2279. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal B. Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kamini S Shah
Primary Examiner
Art Unit 2142

kss